

REMARKS

A Request for a One (1) Month Extension of Time pursuant to 37 CFR §1.136(a) and (b) is attached hereto.

The above-captioned patent application has been carefully reviewed in light of the non-final Office Action to which this Amendment is responsive. Claims 1, 5 and 11 have been amended in an effort to further clarify and distinctly describe the present invention. Claims 2, 3, 6 and 7 have been canceled. To that end, it is believed no new matter has been added.

Claims 1-3 and 5-13 are pending, Claim 4 having previously been restricted. Each of the elected Claims 1-3, 5-8 and 11-13 has been rejected on prior art grounds. Claim 3 has also been rejected based on 35 USC §112, second paragraph and an objection has been raised relating to Claim 2. Applicant herein respectfully requests reconsideration based on the amended claims, as well as the following discussion.

Applicant gratefully acknowledges the allowability of Claims 9 and 10 over the art of record. Applicant further gratefully acknowledges the telephonic interview granted by Examiner Winnie Yip to Applicant's representative, Peter J. Bilinski, on April 25, 2006. The substance of this interview is contained within this response.

Prior to discussing the prior art rejections in detail, Applicant would like to discuss the novel contributions made by the present invention. That is, a carrier is disclosed that is configured to retain an oxygen bottle and more specifically a carrier that is used in conjunction with one or more orthopedic appliances, including a wheelchair and a walker. The carrier is defined by a flexible open-topped bag or container that snugly retains the oxygen bottle and in which the open-top of the container includes a flexible plastic peripheral portion that is sufficiently stiff, as compared with the remainder of the container, to enable a carrier to receive an oxygen bottle while the carrier is still attached to the appliance; that is, without having to first remove the carrier and then attempt to place the bottle in the container, usually while the container is lying on the floor. The present version enables an oxygen bottle to be retained in a vertical attitude and without requiring removal of the carrier from the orthopedic appliance, greatly easing the ability to swap depleted bottles out of the carrier and introduce charged bottles therein.

According to one version, the carrier is attached to a wheelchair. The carrier, however, includes means that permit the carrier to be independently attachable to a first orthopedic appliance, such as a wheelchair and a second orthopedic appliance, such as a walker. To accomplish that end, the herein described carrier includes a pair of upper straps, each pair of the upper strap ends being connected to the open-topped container at one end thereof. Each of these pairs of straps includes a corresponding buckle portion enabling one free strap end to be looped about the handles or other upper supporting portion of the wheelchair and secured to the remaining strap end and the corresponding buckle portion in a releasable fashion. The upper straps can be adjusted in terms of their length, once attached. A lower pair of straps is also provided, the lower pair of straps being attached at one end to a lower portion of the carrier and including respective strap ends that extend from opposing sides of the container. Each of the strap ends can be attached to legs of a wheelchair (or walker) and include hook and loop fasteners on either side of each strap, enabling the straps to be attached onto themselves and permitting adjustment to enable attachment to different sized wheelchairs, for example, such as bariatric as well as other forms of wheelchairs. The adjustment capability further permits the carrier to be used in conjunction with the upper strap pairs to advantageously permit vertical as well as horizontal (lateral) adjustment of the carrier as provided on the orthopedic appliance.

Turning to the prior art rejections, the Examiner has rejected Claims 1-3, 5-7 and 11-12 under 35 USC §102(b), as being anticipated by Locarno (U.S. Patent No. 5,288,011). Applicant respectfully traverses the above rejection. In order to successfully anticipate under the Patent Statute, each and every claimed limitation must be found or its substantial equivalent in a single cited reference. Those limitations that are not found must be notoriously well known to one of sufficient (i.e., ordinary) skill in the field of the invention at the time thereof.

Turning to the cited art, Locarno describes an oxygen tank holder for a wheelchair. The tank holder includes a container that retains an oxygen bottle and further includes respective pairs of straps located at the top and bottom of the holder, respectively, that secure the holder to the frame of the wheelchair. The pair of upper straps each includes buckles 14, 16 that permit the bottle to be shifted laterally, as needed, relative to the back of the wheelchair. The bottom straps are defined by a pair of preformed loops 26, 28 in which one of the loops is preferably made larger than the remaining loop. See col. 2, lines 57-59. The purpose for this relative size difference, as explained in the Locarno reference at col. 3, lines

19-22, is to permit the bottom of the container 2 to remain aligned with the top of the container, as adjusted by the buckles 14, 16. As noted in Locarno, the container can be displaced relative to the center of the back of the wheelchair so as not to interfere with the back of a user of the chair. The bottom straps, however, are not actually separately adjustable. That is, these lower or bottom straps do not allow their own adjustability once they have been attached, outside of the oversizing of one strap versus the remaining strap. The lower straps are defined merely as loops that are sewn to the pouch 2, as clearly shown in Figs. 1 and 2. As such, this configuration would not permit vertical adjustment of the container once attached to the wheelchair. Therefore, the attachment scheme of Locarno fails to permit both lateral and height (vertical) adjustment of the container when attached to the orthopedic appliance.

Applicant has amended Claim 1 to further clarify the present differences by specifying upper pairs of straps in regard to the container, and in which each of the upper pairs of straps extending from opposing ends of the upper portion of the container. Moreover, each of the strap pair includes a pair of strap ends, a first strap end that includes a buckle end and a second strap end that is adapted to be looped around a support portion of an appliance and is connected to the first strap end by way of a buckle connection. In addition, Claim 1 has been amended to positively recite a pair of lower straps, each of the pair of lower straps including strap ends extending from opposing sides of the container and having hook and loop fasteners on each side of each strap to enable the straps to be looped over a lower support portion of the appliance and permit selective lateral as well as vertical adjustment based on the adjustability afforded by each of the upper and lower straps. Because the cited reference to Locarno fails to include all of the essential elements now recited in Claim 1, as amended, it is believed there can be no anticipation under the Statute. Reconsideration is respectfully requested.

Claims 2, 5 and 7 are believed to be allowable for the same reasons pertaining to amended Claim 1, since each of the foregoing claims merely depend therefrom and add further limitations. Claims 3 and 6 have been canceled and therefore the rejection is moot with regard to these latter claims. Reconsideration is respectfully requested.

Claim 11 has also been amended to more clearly point out and distinctly describe the present carrier. To that end, Claim 11 has been amended to positively recite the upper and lower straps, their structure and their interplay in relation to a wheelchair. As a result, Claim 11, as amended, is also believed to be patentably distinct of the cited reference in that Locarno fails to provide both upper and lower sets of straps as required for permitting both lateral and height (vertical) adjustment of the bottle carrier. As previously noted, Locarno fails to suggest, enable or otherwise provide both vertical and lateral adjustment using both sets of straps of its carrier. Moreover, the Locarno apparatus fails to describe or suggest a lower set of straps in which hook and loop fasteners are provided on each side of each of the extending strap ends, thereby permitting the straps to be looped about the lower support portion and permitting the sizes of the loops to be selected over a range of sizes based on where the hook and loop fasteners are attached together. Since Claim 11 fails to include essentially claimed subject matter, there can be no anticipation under the Statute and it is believed that this claim is allowable over the cited reference. Claim 12 is also believed to be distinct, since this claim is dependent on Claim 11 and merely adds additional features. Reconsideration is therefore respectfully requested.

With regard to U.S. Patent No. 4,850,383 to McBride, it is further believed that Claims 1 and 11 are patentably distinct. This latter reference, discussed during the April 25 interview and noted by the Examiner, relates to a crutch bag that is disposed within the frame of a Y-shaped crutch. The bag includes an upper set of straps and a lower set of straps. The upper set of straps includes two pairs of straps while the lower straps include a single strap comprising strap ends extending from opposite sides of the crutch bag, see Figs. 1 and 4. As shown, one strap end includes a hook and loop fastener 40 on one side of the strap 38 and the remaining strap end includes a complimentary hook and loop fastener 42 that is provided on the opposite side of the strap to permit the strap to be fitted around the frame of the crutch. On the other hand, each strap end of the present carrier includes hook and loop fasteners on each side of each strap end to permit each strap end to be selectively attached onto itself, permitting a variably sized wheelchair to be fitted with an oxygen bottle and further permitting both vertical and lateral adjustment by way of each strap end.

Claims 1-3, 5, 6, 8, 11 and 12 have been rejected under 35 USC §102(b) as being anticipated by Sanders (U.S. Patent No. 5,154,331). Applicants respectfully traverse this rejection.

As previously noted and in order to successfully anticipate under the Patent Statute, each and every claimed limitation must be found or its substantial equivalent in a single cited reference. Those limitations that are not found must be notoriously well known to one of sufficient (i.e., ordinary) skill in the field of the invention at the time thereof.

Sanders '331 describes an arm rest having an integral pouch that is used in conjunction with a wheelchair. As a preliminary matter, it should be noted that the arm rest is provided, according to this reference, as a secure storage area for personal items and this device is not configured or otherwise adapted to retain an oxygen bottle. The storage pouch portion does include provisions for storing an item such as an umbrella, as noted by the Examiner, but it should be realized herein that an umbrella is far lighter, much more flexible and overall is much easier to retain than a rigid, inflexible and much heavier oxygen bottle that would most likely, assuming that an oxygen bottle could be fitted therein, create a load situation that would imbalance the wheelchair or would be difficult for the user, such as in making turns through doorways or other openings, creating a very unsafe and potentially hazardous situation, particularly for the user. In any event, using a structure such as Sanders would clearly be an inappropriate one with regard to the storage of an oxygen bottle and therefore one of ordinary skill in the field as an initial matter would not consult this personal storage reference for teachings concerning the storage and retention of an oxygen bottle.

Even if this cited reference were deemed capable of such functionality, Applicant herein submits that this reference still fails to provide or describe essential elements that are positively recited in amended Claims 1 and 11. To that end, Sanders fails categorically to provide any teaching or suggestion of features that would enable lateral and vertical adjustment of the container, once the container is attached to the orthopedic appliance.

As noted previously, Claim 1 has been amended to clarify those features that are provided by the present carrier. More particularly, this claim has been amended to now more clearly recite the nature and structure of the upper pairs of straps and the lower strap pair. In addition, Claim 1 has been amended to recite that the lower straps each include hook and loop fasteners on each side of each strap. Claims 2, 5 and 7 are believed to be allowable for the same reasons. Claims 3 and 6 have been canceled and therefore the rejection with regard to these claims is believed to be moot.

Claim 11 has also been amended to more clearly and distinctly point out the lateral and height adjustable features of the herein described carrier apparatus. To that end, Claim 11 has been amended to better define the upper and lower straps of the carrier. As noted, Sanders fails to provide any form of adjustability once the arm rest is placed upon the wheelchair. Moreover, this cited reference also fails to describe or suggest the use of a lower set of straps that includes hook and loop fasteners on either strap to permit the straps to be looped upon themselves and permit selective size adjustment. Claim 12 is believed to be allowable for the same reasons pertaining to Claim 11. Reconsideration is therefore respectfully requested.

Claims 1-3, 5-8, 11 and 12 have also been rejected under 35 USC §102(b) as being anticipated by Milluzzi (U.S. Patent No. 5,871,183). Applicant respectfully traverses the above rejection. As previously noted and in order to successfully anticipate under the Patent Statute, each and every claimed limitation must be found or its substantial equivalent in a single cited reference. Those limitations that are not found must be notoriously well known to one of sufficient (i.e., ordinary) skill in the field of the invention at the time thereof.

Milluzzi relates to a golf bag carrier having strap members that are located at the upper and lower portions thereof for securing a golf bag to a wheeled chassis. The carrier further permits adjustability between the straps, so as to handle different sized golf bags by providing a diametral adjustment to permit the bag to be fitted within each of the strap means. It is quite evident from the described structure of this reference, however, that the Milluzzi carrier fails to provide lateral as well as height adjustment capability-see Fig. 1. Moreover, it is equally clear that this reference is quite different from the present invention for other reasons. First, this cited reference fails to describe a flexible bag like container. Though a golf bag is flexible arguably, this bag is not a carrier as presently claimed. Instead and according to Milluzzi, a golf bag is fitted within a set of straps on a wheeled chassis or frame to permit the bag to be pulled along a golf course by a golfer during a round of golf. The carrier shown is not adapted to support a flexible container that then contains an oxygen bottle and is attached to a wheelchair. Obviously, the wheeled portion of the assembly is not an orthopedic appliance, such as a walker or a wheelchair and it is not understood or gleaned from the reference how this structure would be attached to the support of an orthopedic appliance.

Therefore, it is believed this reference at least on its own could not form a valid anticipatory rejection with regard to Claims 1 and 11, even prior to the present amendment, in that essential claimed features are entirely missing from this reference. The above-noted amendments to Claims 1 and 11, now clarifying the lateral and vertical adjustability of a supported oxygen bottle using upper and lower straps, further distinguish over the cited reference.

Because the features recited in Claims 1 and 11 are entirely missing from the cited reference, there can be no anticipation of either Claim 1 or Claim 11, as amended, under the Statute. Claims 5, 7, 8 and 12 are believed allowable for the same reasons since the latter claims depend on Claims 1 and 11, respectively. Claim 5 was also amended to note that the first orthopedic appliance is a wheelchair and the second orthopedic appliance is a walker. To that end, it is believed that support is provided within the above-captioned patent application and therefore no new matter has been added. Reconsideration is respectfully requested.

Claim 8 has been rejected under 35 USC §103(a) as being unpatentable over Locarno and further in view of Milluzzi. Applicant respectfully traverse the above rejection.

In order to make a "prima facie" obviousness rejection under the Statute, each and every essentially claimed limitation must be found in or suggested by the cited prior art, either singly or in combination. Those limitations that are not found in or suggested by the prior art must be notoriously well known to one of sufficient skill in the field of the invention at the time thereof. There must also be a motivation found in the prior art as a whole to make the purported combination. Such a combination cannot be the result of piecemeal combination of references using impermissible hindsight (i.e., advance knowledge) of the invention.

Both Locarno and Milluzzi have each been previously discussed in detail. Neither of these cited references, either separately or in combination, teach, describe or suggest an oxygen bottle carrier that is used for an orthopedic appliance(s) that provides both lateral and height adjustability. Milluzzi relates to the support of a golf bag onto a wheeled chassis in which a pair of straps located at the upper and lower ends thereof provide a level of adjustment, but in which the adjustment permits bags having different diameters to be attached. No lateral or height adjustment per se is possible. Locarno describes a carrier used

in conjunction with a wheelchair, but this reference fails to include both upper and lower straps that permit both lateral and vertical (height) adjustment of a container. As such, each of these references even if combinable fail to include all essential elements of amended Claim 1 wherein the carrier includes upper pairs of straps and a lower pair of straps in which each of the lower straps includes a hook and loop fastener on either side of each strap to permit each strap end to be looped about itself and therefore accommodate various sized orthopedic appliances.

Claim 1 therefore includes subject matter that is neither taught nor suggested by Locarno or Milluzzi. Therefore, Claim 8, being dependent on Claim 1, is also believed allowable for the same reasons. Reconsideration is therefore respectfully requested.

Finally, Claim 13 has also been rejected under 35 USC §103(a) as being unpatentable over Locarno and further in view of Griffin (U.S. Patent No. 6,299,043). Applicant respectfully traverses this rejection.

As previously noted and in order to maintain a successful prima facie obviousness rejection under the Statute, each and every essentially claimed limitation must be found in or suggested by the cited prior art, either singly or in combination. Those limitations that are not found in or suggested by the prior art must be notoriously well known to one of sufficient skill in the field of the invention at the time thereof. There must also be a motivation found in the prior art as a whole to make the purported combination. Such a combination cannot be the result of piecemeal combination of references using impermissible hindsight (i.e., advance knowledge) of the invention

Locarno has been previously discussed at length herein. This primary applied reference fails to teach, describe or suggest a carrier for an oxygen bottle that can be adjusted both vertically (up and down) as well as laterally (side to side) after attachment to an orthopedic appliance, such as a wheelchair and/or walker. In addition, this patent also fails to teach or describe the use of a lower pair of straps that are used to loop to a lower supporting portion of an orthopedic appliance (such as a wheelchair or walker) and in which each of the lower straps includes hook and loop fasteners on either side thereof to permit the carrier to be attached to various sized appliances.

The citation of Griffin '043 fails to include or suggest these essential features. Griffin merely describes a heat resistant container for storing a life line and does not include the foregoing essential features of Claim 11. Therefore, this claim cannot render Claim 13 obvious for the same reasons, since this claim is dependent upon Claim 11. Reconsideration is respectfully requested.

As to the Section 112 rejection and the claim objection, Applicant has canceled Claims 2 and 3. As a result, it is believed that the rejection is now moot and withdrawal of same is therefore respectfully requested.

Finally, Applicant has amended the specification to correct an obvious typographical error concerning the filing date of the parent application. It is respectfully noted that this error was only recently noted and that its correction is merely clerical. Entry of same is respectfully requested.

In summary, it is now believed that the above-captioned application is in an allowable condition and therefore an expedited Notice of Allowance is earnestly solicited.

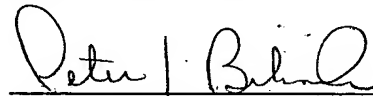
If the Examiner wishes to expedite disposition of the above-captioned patent application, she is invited to contact Applicant's representative at the telephone number below.

The Director is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-0289.

Respectfully submitted,

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